

## AMENDMENTS TO RULE 31

RULE 31 is amended as follows:

### RULE 31. Deposition Upon Written Questions

(a) Serving Questions[~~--~~]; Notice.]

**(1)** ~~[After service of the complaint, any]~~ A party may take the testimony of any person, including a party, by deposition upon written questions **without leave of court except as provided in paragraph (2)**. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. ~~[The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.]~~

**(2)** A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties.

**(A)** a proposed deposition would result in more than ten depositions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by third-party defendants;

**(B)** the person to be examined has already been deposed in the case; or

**(C)** a party seeks to take a deposition before the time specified in Rule 26(d).

**(3)** A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provision of Rule 30(b) ~~[+4+]~~ **(6)**.

**(4)** Within ~~[30]~~**14** days after the notice and written questions are served, a party may serve cross-questions upon all other parties. Within ~~[10]~~**7** days after being served with cross-questions, a party may serve redirect questions upon all other parties. Within ~~[10]~~**7** days

after being served with redirect questions, a party may serve recross[=] questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer To Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.

(c) Notice of Filing. \* \* \*

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Nov. 29, 1995, eff. March 31, 1996; \_\_\_\_\_ 2000, eff. \_\_\_\_\_, 2000.)

#### **ADVISORY COMMITTEE NOTE**

Current CIT Rule 31(a) allows depositions upon written questions "after service of the complaint" and requires leave of court if the proposed deponent is confined in prison. Fed. R. Civ. P. 31(a) requires leave of court not only if the deponent is in prison but (A) where the deposition would result in more than 10 depositions by the party, (B) the person to be examined has already been examined, or (C) the party seeks to take the deposition before the time specified in Rule 26(d), i.e. before the parties have met and conferred, which is to occur at least 14 days before a scheduling conference is held or a scheduling order is due under Rule 16(b). The Committee has recommended adopting Fed. R. Civ. P. 26(d) and recommends conforming CIT Rule 31(a) to the Fed. R. Civ. P. 31(a).

The final paragraph in the current CIT rule and the comparable (fourth) paragraph in the Fed. R. Civ. P. set forth different times for serving cross questions (30 days CIT; 14 days Fed. R. Civ. P.), redirect questions (10 days CIT; 7 days Fed. R. Civ. P.), and recross questions (10 days CIT; 7 days Fed. R. Civ. P.). The Committee does not consider that either the jurisdiction or subject matter of the CIT necessitates a longer time period than is allowed under the Fed. R. Civ. P. and therefore recommends conforming to the time periods of Fed. R. Civ. P. 31(a).

The Committee recommends retaining USCIT R. 31(c). The reference to

receipt of the deposition by the party taking it was added when Rule 5 was amended effective March 31, 1996.